

## **REMARKS/ARGUMENTS**

Applicants have reviewed and considered the Final Office Action mailed on April 29, 2009 ("Office Action"), and the references cited therewith.

Claims 1-20 have previously been cancelled and claims 32-40 have been previously withdrawn. No claims are currently amended or added. As a result, claims 21-31 are now pending and currently under consideration in this application.

### **I. CLAIM REJECTIONS §102(e)**

Claims 21-23 and 25-30 stand rejected under 35 U.S.C. §102(e) as being anticipated by Bonutti (U.S. Patent No. 7,134,437). Applicants respectfully traverse the rejection. In response to Applicants' previous arguments that Bonutti does not anticipate claims 21-23 and 25-30, the Examiner states:

Applicant contends that Bonutti does not disclose a cutting tool received within an opening in the housing. The cutting tool is capable of being "received" within an opening in the housing. The claim does not require that the cutting tool is attached to, or connected with, an opening in the housing cell.

Office Action, p. 6.

Applicants note that claim 20 requires in part "a dermal tissue cutting tool mounted on the rotatable shaft, wherein the dermal tissue cutting tool is received within an opening in the housing" (emphasis added). Claim 20 does not merely require that the cutting tool be capable of being received within an opening in the housing, but instead requires that the cutting tool is received within an opening in the housing.

Applicants agree with the Examiner that claim 20 "does not require that the cutting tool is attached to, or connected with, an opening in the housing cell." Applicants also appreciate that "pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'" MPEP §2111 (citations omitted). However, "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." *Id.* (citations omitted). One skilled in the art would not interpret the term "received within" to include

the relationship between the cutting tool of Bonutti and an opening in the housing. In fact, the Board of Patent Appeals and Interferences ("the Board") has previously reversed a claim rejection in which the examiner improperly construed the term "received within". In *Ex parte Underbrink*, Appeal No. 2006-1124, the Board considered the examiner's rejection of the following claim (emphasis added):

1. (rejected) A sink comprising:  
a basin; and

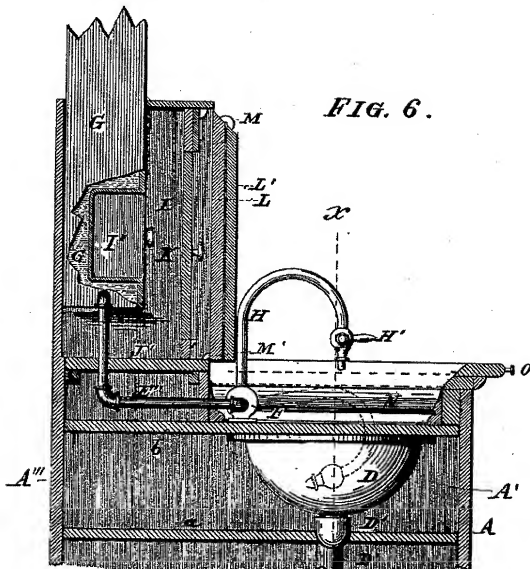
a faucet assembly comprising a discharge neck coupled to a faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes out from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage.

In reversing the examiner's rejection of the claim under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 449,430 to Polakoff, the Board held:

We will not sustain this rejection as it is directed to claim 1 because we agree with the appellants that:

As seen in Figs. 4 and 5 of Polakoff, the faucet assembly F, H, H' is not supported on the basin d, but above the basin D on the horizontal partition b. As seen in Fig. 6, the faucet assembly F, H, H' is not received within the basin D (part F and most of H remain above the basin)[brief at page 3].

Appeal No. 2006-1124, p. 3 (emphasis added). The Board found that components that were "above" the basin (either wholly or in part) were not "received within" the basin. Figure 6 of the cited reference is provided below:

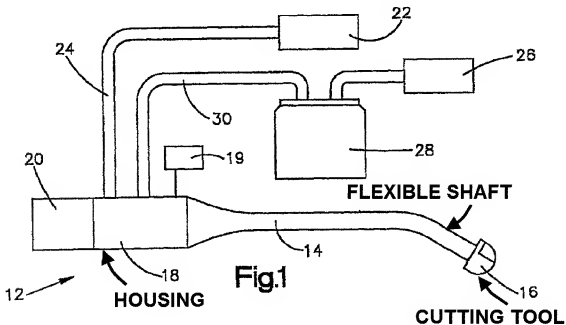


As illustrated above, the faucet assembly (F, H, H') is "capable of" being received within the basin (D) of the device, because the faucet assembly could physically be located within the basin. However, the claim at issue in the appeal required the components be "received within", rather than just be capable of being "received within". If the Board had interpreted the claim term in the manner proposed by the Examiner in the pending case, the rejection would have been upheld. However, the Board did not sustain the

rejection, because the plain language of the claim at issue did not support such an interpretation.

Just as in claim 1 in *Underbrink*, pending claim 21 requires that a component (here, a cutting tool) be "received within" another component (here, an opening in the housing). Just as in claim 1 in *Underbrink*, pending claim 21 does not merely require that a component "is capable of being received" as proposed by the Examiner.

As shown below in the annotated Figure 1 of Bonutti, the housing 18 and cutting tool 16 are separated by a flexible shaft 14.



As illustrated above, the Bonutti device does not disclose a cutting tool received within an opening in the housing. Instead, Bonutti explicitly states that "flexible drill 12 has a flexible shaft 14 and a cutting tip 16 at the distal end of the shaft 14." Col. 5, lines 40-41 (emphasis added). Just like the faucet assembly and basin of Polakoff, the

cutting tool and housing of Bonutti are spaced apart from each other. Therefore, the cutting tool of Bonutti is not "received within" the housing of Bonutti.

Bonutti further provides that "[w]ith the present invention all work is done by going percutaneously through the skin to a specific tissue area to minimize the damage to skin, muscle and bone." Col. 3, lines 57-59. In light of the fact that the cutting tool of Bonutti operates percutaneously, it is not feasible for the cutting tool to be received within the housing. For at least these reasons, Bonutti does not disclose the invention claimed in claim 21.

The above-cited language further emphasizes that the Bonutti device is not a "dermal tissue nanografting system" as claimed in claim 21. Instead, "all work" performed with the Bonutti device is performed "percutaneously", *i.e.* through the surface of the dermal tissue. *Id.* The Bonutti reference further discloses "[t]he invention is not limited to removal of bone tissue and may be used for removal of cartilage, muscle, fetal tissue, etc." Col. 2, lines 29-31. Nowhere does the reference disclose that the Bonutti device can be used for nanografting dermal tissue. Claim 21, as well as dependent claims 22-24, requires that the claimed system is configured to harvest dermal tissue. For at least this reason, Bonutti does not disclose the invention claimed in claim 21.

For at least the reasons provided above, Applicants believe that Bonutti does not anticipate the invention claimed in claim 21 or depending claims 22-23 and 25-30. Applicants respectfully request withdrawal of the rejection and a timely allowance of the claims.

## II. CLAIM REJECTIONS §103(a)

Claims 24 and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bonutti. Applicants respectfully traverse the rejection. Claims 24 and 31 depend from claim 21 and are allowable for at least the reasons provided above for claim 21. Applicants respectfully request withdrawal of the rejection and a timely allowance of the claims.

Conclusion

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) or an additional Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made and the Commissioner is authorized to charge the required fee to deposit account number 500326.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 500326.

In light of all the foregoing, believing that all things raised in Examiner's April 29, 2000 Final Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at 512-536-3072.

Respectfully submitted,



Chris W. Spence  
Reg. No. 58,806  
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
Telephone: (512) 536-3072  
Facsimile: (512) 536-4598

Date: June 24, 2009